

Notes on March 16, 2018 NRC letter to OST, Powertech & CI Survey plan

The survey plan includes:

- (i) onboarding a contractor to facilitate implementation of the approach;
- (ii) involving the Lakota Sioux Tribes;
- (iii) holding meetings with Tribal Leaders of the Lakota Sioux Tribes, to the extent possible;
- (iv) conducting oral history interviews with Tribal Elders of the Lakota Sioux Tribes;
- (v) providing an opportunity for a field survey of the Dewey-Burdock ISR project site; and
- (vi) supplementing the analysis in the FSEIS to account for information obtained concerning sites of historic, cultural, and religious significance to the Lakota Sioux Tribes.

Once the NRC staff brings its contractor on board, the NRC plans to hold a meeting (May 28-June 1, 2018) with the Lakota Sioux Tribes interested in participating in the field survey to discuss and establish the survey methodology and potential areas to be examined during the field survey.

OST Response to the March 16 NRC proposal:

The current proposal lacks two important details identified by the Tribe during the March 27, 2018 conference call with the Board and in the Tribe's previous correspondence to NRC Staff:

- 1) the proposal does not address involvement by any of the affected Tribes in the selection of a qualified contractor necessary to facilitate the survey components, or the scope of work for the contractor.
- 2) the proposal does not include any specifics related to reimbursement for costs and staff time of any of the Tribes in conducting necessary duties contemplated in the proposal.

While not a bar to its participation, the Tribe repeats its request that the contractor selection process and the finalizing of the scope of work for the contractor be open to input from the Tribes in order to avoid potential conflicts of interest that could diminish Tribal participation and to ensure the greatest level of support possible from the Tribes.

OST cautions: the first step toward NEPA compliance involves the design of a scientifically sound cultural resources survey

Powertech response to the March 16 NRC proposal:

Powertech believes that the current NRC Staff approach to resolve Contention 1A is now more cost-prohibitive than previous proposals.

Powertech believes that it has presented an alternative proposal that enables the resolution of the FSEIS deficiencies identified by the ASLB and is not cost prohibitive, unlike the NRC Staff approach.

Powertech COULD agree to this site survey approach¹ IF:

- 1.) The ASLB establishes enforceable timelines and repercussions for missed timelines and these are enforced against parties who fail to adhere to these timelines.
- 2.) The ASLB provide confirmation that contention 1A will be satisfied through this process.
- 3.) The ASLB provide confirmation, that, should any Native American Tribe(s) participating in data collection choose not to participate in the NRC Staff approach, such lack of participation constitutes termination of their involvement in the remainder of this process and will not prevent the resolution of Contention 1A in favor of the NRC Staff and Powertech.

Further Powertech COULD agree to this site survey approach² IF, NRC staff and contractor costs are not passed onto Powertech.

From ASLB March 29 order on 6th call:

The parties further agreed to a sixth telephonic status conference with the Board between April 4 and 6, 2018.¹³ To this end, the Board requests that one representative of the collective parties contact Board law clerk, no later than April 2, 2018, to provide dates and times (Eastern Time) of availability during that period.¹⁴ The Board further requests that the parties provide the Board with a summary of the discussion at any telephonic conference among counsel no later than one day preceding the sixth telephonic status conference.

NRC Staff counsel stated that the March 2018 Approach did not directly provide for reimbursement and compensation for Tribal participation, but that the NRC Staff would defer to Powertech on whether Powertech would offer the participating Tribes any form of reimbursement or compensation.

The Order includes a paragraph from Advisory Council on Historic Preservation (ACHP) guidance to agencies conducting field surveys that involve identifying Tribal cultural resources. The Board encourages Powertech to continue the established practice of materials applicants/licensees providing an honorarium and reimbursement for Tribal expenses in the identification of Tribal religious and cultural resources. Alternatively, the NRC Staff could consider including the expenses for the identification of Tribal resources as part of its planned contract to obtain services to conduct the site survey and oral history interviews.

Role of contractor:

With the support and participation of the Lakota Sioux Tribes and Powertech, the NRC staff, with the assistance of a contractor, will conduct a field survey consisting of the following elements:

The field survey will be conducted using a survey methodology that will be established in coordination with the NRC, with the support of the contractor, and the Lakota Sioux Tribes in advance of the field survey.

In an effort to carry out an effective and efficient field survey, it is the NRC staffs intent, to the extent possible, to identify potential areas to be examined in coordination with the Lakota Sioux Tribes and NRC contractor prior to the field survey.

During the field survey, the NRC staff and contractor will accompany the participating tribal representatives. The NRC contractor would facilitate the survey, and document findings and supporting information, as appropriate, to be considered in the development of the survey report.

The NRC contractor will document the results and findings of the first phase of the field survey, which will be shared with the participating Tribes for their review and comment in July 2018. Upon completion of the second phase of the survey, the NRC contractor will prepare a survey report documenting the results and findings of the first and second phases of the field survey.

Of note, with the selected approach outlined in this letter, the NRC staff and contractor efforts that will be recovered through fees directly billed to Powertech are estimated at approximately 1 Full Time Equivalent (FTE) and \$250,000, respectively. The total fee billable cost to Powertech is estimated to be about \$645,000.

With the assistance of its contractor, the NRC will also request oral history interviews with the Tribal Elders of the Lakota Sioux Tribes. The oral history interviews would be focused on gathering information about resources of significance to the Lakota Sioux Tribes that could be impacted by the Dewey-Burdock ISR project. Information gathered through these interviews would be documented in a report to be developed by the NRC contractor in coordination with the Tribes.